

**§ 1045.37 Classification guides.**

(a) The classification and declassification determinations made by the DOE Directors of Declassification and Security Affairs under the classification criteria in § 1045.16 shall be promulgated in classification guides.

(b) DOE shall jointly develop classification guides with the DoD, NRC, NASA, and other agencies as required for programs for which DOE and these agencies share responsibility.

(c) Agencies shall coordinate with the DOE Director of Declassification whenever they develop or revise classification guides with RD or FRD information topics.

(d) Originators of classification guides with RD or FRD topics shall review such guides at least every five years and make revisions as necessary.

(e) RD classifiers shall use classification guides as the primary basis for classifying and declassifying documents containing RD and FRD.

(f) Each RD management official shall ensure that all RD classifiers have access to all pertinent nuclear classification guides.

**§ 1045.38 Automatic declassification prohibition.**

(a) Documents containing RD and FRD remain classified until a positive action by an authorized person is taken to declassify them.

(b) In accordance with the Atomic Energy Act, no date or event for automatic declassification ever applies to RD and FRD documents, even if such documents also contain NSI.

(c) E.O. 12958 acknowledges that RD and FRD are exempt from all provisions of the E.O., including automatic declassification.

**§ 1045.39 Challenging classification and declassification determinations.**

(a) Any authorized holder of an RD or FRD document who, in good faith, believes that the RD or FRD document has an improper classification status is encouraged and expected to challenge the classification with the RD Classifier who classified the document.

(b) Agencies shall establish procedures under which authorized holders of RD and FRD documents are encour-

aged and expected to challenge any classification status they believe is improper. These procedures shall assure that:

(1) Under no circumstances are persons subject to retribution for bringing forth a classification challenge.

(2) The individual who initially receives the challenge provides a response within 90 days to the person bringing forth the challenge.

(3) A decision concerning a challenge involving RD or FRD may be appealed to the DOE Director of Declassification. In the case of FRD and RD related primarily to the military utilization of nuclear weapons, the DOE Director of Declassification shall coordinate with the DoD. If the justification for classification does not satisfy the person making the challenge, a further appeal may be made to the DOE Director of Security Affairs.

(c) Classification challenges concerning documents containing RD and FRD information are not subject to review by the Interagency Security Classification Appeals Panel, unless those documents also contain NSI which is the basis for the challenge. In such cases, the RD and FRD portions of the document shall be deleted and then the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

**§ 1045.40 Marking requirements.**

(a) RD classifiers shall ensure that each RD and FRD document is clearly marked to convey to the holder that it contains RD or FRD information, the level of classification assigned, and the additional markings in paragraphs (b)(3) and (4) of this section.

(b) *Front Marking.* In addition to the overall classification level of the document, the following notices shall appear on the front of the document, as appropriate:

(1) If the document contains RD:

RESTRICTED DATA

This document contains RESTRICTED DATA as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(2) If the document contains FRD but does not contain RD: